

## **RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS**

(a) Service: When Required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, notice of change of attorneys, pretrial memorandum, demand, offer of judgment, designation of record and statement of points on appeal, and similar paper shall be served upon each of the parties, but no service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

(b) Same: How Made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party personally is ordered by the court. When an attorney has filed a limited appearance under Rule 11(b), service upon the attorney is not required. Service upon an attorney who has ceased to represent a party is a sufficient compliance with this subdivision until written notice of change of attorneys has been served upon the other parties. Service upon an attorney or upon a party shall be made by delivering a copy to the attorney or to the party or by mailing it to the last known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at the office of the attorney or of the party with the person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein, or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

(c) Same: Numerous Defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendant and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due

notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) Filing: No Proof of Service Required. Subject to the provisions of Rule 26(f), all papers after the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter. Such filing by a party shall constitute a representation by the party, subject to the obligations of Rule 11, that a copy of the paper has been or will be served upon each of the other parties as required by subdivision (a) of this rule. No further proof of service is required unless an adverse party raises a question of notice.

(e) Filing With the Court Defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court except that a justice or judge may permit the papers to be filed with that justice or judge, in which event the justice or judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. After hours or other office filings are subject to Rule 5(g).

(f) Filing of Papers Not in Compliance with Rules, Orders or Statute. Filings that are received but which are not signed, or are not accompanied at the time of filing by a legally required element, including but not limited to, a filing fee, appeal fee, registry recording fee and envelope or summary sheet, or, if filed by an attorney, do not have the attorney's Maine Bar Registration Number, shall be returned by the clerk as incomplete. The clerk will not docket the attempted filing but will retain a copy of the attempted filing and the notice of return for six months. The offeror may refile the documents when all elements are complete. The filing will be docketed when the complete filing is received.

(g) After Hours and Other Office Filings.

(1) Clerks of courts may not, unless authorized by a judge or justice, accept filings for other courts, or accept pleadings or other documents filed with or left for the clerk after normal business hours. Unless the party or counsel has filed the pleading or document directly with a judge or justice, or the clerk has received explicit instructions from a judge or justice to accept an after-hours filing as filed on the date it is made, the clerk shall date stamp the filing, and docket it as filed, on the next regular business day.

(2) Judges or justices may, for good cause shown, accept filings made after regular business hours, accept filings for other courts, or may make

arrangements with a clerk for the clerk to accept a filing after regular business hours. In such a matter, the judge, justice or clerk shall note the judge's authorization on the pleading or document, along with the date and time of actual receipt. The receiving official shall promptly transmit the filing to the proper court, where the filing shall be docketed as filed on the date originally received by the judge, justice, or clerk. Judges or justices may discuss the need for such filings with the offering party or counsel, and such discussions are deemed not to be ex parte communications, or to require notice to opposing parties or counsel.

(h) Pleading Summary Sheets.

(1) Any pleading which sets forth a claim for relief, except those specified in subdivision (3) below, shall be accompanied by a properly completed and executed Summary Sheet which is available in blank form at the clerk's office. Docket numbers of original Disclosure proceedings must be indicated on Summary Sheets initiating a second or subsequent request for disclosure.

(2) Summary Sheets are required to be filed with Post-Judgment Motions in proceedings under Rule 80(k).

(3) Summary Sheets are not required in Small Claims, UIFSA, Mental Health Actions or DHS Protective Custody or Administrative Paternity Proceedings and are not required in Special Actions (SA) other than Money Judgment requests for disclosure.

(i) Form of Papers.

(1) Size. All original papers shall be typed double-spaced or printed on 8 1/2 x 11 inch paper with text on only one side of each page.

(2) Condensed Transcripts. Unless otherwise ordered by the court, a party serving or filing a transcript of a deposition or other proceeding may elect to serve or file a copy of the transcript with up to four 8 1/2 x 11-inch pages or normal type size reduced so that such pages may be reproduced on a single 8 1/2 x 11-inch sheet, with text on one side of the sheet only, if the reporter or stenographer transcribing the deposition or proceeding has the capacity to produce a transcript in this format.

(3) Endorsement for Costs. In any case where an endorsement for costs is required, the name of an attorney of this State appearing on the complaint

filed with the court, shall constitute such an endorsement in absence of any words used in connection therewith showing a different purpose.

(j) Fax Filings.

(1) Fax Filings. Facsimile documents are not acceptable substitutes for signed original documents required by M.R. Civ. P. 11 and will not be accepted as filings. Except as otherwise provided in this Rule, documents transmitted by facsimile may not be retained in a case file or docketed by a clerk. If an attempt is made to file pleadings or other documents by facsimile, the clerk shall dispose of the documents, and shall attempt to transmit a form notice of disposal back to the sender.

(2) In a proceeding under the Uniform Interstate Family Support Act, documentary evidence or orders from another court or tribunal may be received from another state by facsimile, and may be filed and docketed by a clerk.

(3) Judges may accept correspondence or other communications which are transmitted by fax for informational purposes but any such documents accepted by a judge under this subdivision will not ordinarily be retained in any case file.

(k) Electronic Filing. Filings by electronic transmission of data or by means of a compact disk (CD) or floppy disk or any other method for electronic or internet filing in place of the filing of paper documents required by these rules, is not permitted.

**Advisory Notes  
2004**

In light of current discussions of electronic filing, M.R. Civ. P. 5(k) is added to clarify that, for the present time, electronic filing with the Maine courts is not permitted. Presently, the trial courts lack the capacity to receive, record or retain electronically filed documents.

**Advisory Notes  
2004**

Pursuant to M.R. Civ. P. 5(f), documents filed at clerks' offices and not signed or otherwise accompanied by the requisite fee or some legally required element are sent back without a copy being retained and without being docketed.

As a result, there is no accurate record of what was filed or when it was filed, but only a copy of the notice of returning the document with the date of the return notice. When it turns out a document may have been improperly sent back, or a minor inadvertence could have been corrected, there is now way to recreate what was filed and when it was filed. As a result, important rights may be lost if the documents were time sensitive due to statutes of limitations or filing deadlines. The problem has escalated recently, particularly in domestic relations cases, due to confusion in clerks' offices as to what filings do or do not require fees under the Court Fees Schedule adopted in August, 2003. For example, motions to amend child support do not require fees, motions to amend other parental rights do require fees.

The amendment addresses this problem by having the clerk retain a copy of the document attempted to be filed so that some reflection of timing of the filing is preserved and some recourse is possible in case of an error in rejecting a document.

**Advisory Committee's Notes**  
**July 1, 2001**

[Rule 5(b) Amendment]

The Court has amended the Maine Bar Rules and Rules 5, 11 and 89 of the Maine Rules of Civil Procedure to permit attorneys to assist an otherwise unrepresented litigant on a limited basis without undertaking the full representation of the client on all issues related to the legal matter for which the attorney is engaged. By these amendments, the Court has sought to enlarge access to justice in Maine courts.

The amendment to Rule 5(b) makes clear that where an attorney has filed a limited appearance under amended Rule 11(b), service of papers upon the attorney is not required. Service is sufficient if made upon the party, despite the limited representation. The purpose of the amendment is to avoid confusion by establishing the identity of the person to be served throughout the case. The amendment places the burden upon the otherwise unrepresented litigant and the attorney filing the limited appearance to ensure that have made arrangements for served papers to be processed in a timely fashion. At the same time, two observations are appropriate. First, the amendment applies only in cases in which the limited appearance has been filed under Rule 11(b); in all other cases, the first sentence of Rule 5(b) requires service on the attorney, not the represented party. Second, even in cases in which service upon the party is permitted, the amendment

is not intended to discourage the tradition of courtesy among the Maine Bar by sending to the attorney copies of served papers.

[Rule 5(d) Amendment]

M.R. Civ. P. 83(3) provides that a reference to an attorney includes the party represented by the attorney, and a reference to a party includes the party's attorney. However, change in Rule 5 is recommended to specify that it covers parties, which include attorneys, to avoid potential for confusion by individuals representing themselves who may believe that, because of the Rule 5(d) references to "attorney," unrepresented parties may have a lesser obligation with regard to service on other parties. The rule change clarifies the point and makes clear that parties representing themselves have the same obligation as represented parties to serve documents filed with the court on all other parties and be subject to the obligations of Rule 11 in such filings.

**Advisory Committee's Notes  
May 1, 2000**

Rule 5 (e), (f), and (g) are significantly amended, principally to accommodate the MEJIS changes directed by the November 27, 1996, September 19, 1997, May 1, 1998 and July 31, 1998 Administrative Orders.

Subdivision (h) is entirely new and references pleading summary sheets. It is taken, with modification, from the Administrative Orders and includes provisions which the Administrative Orders indicated should be included in Rules 8 and 10. The provisions indicated for Rules 8 or 10 are moved to this new Rule 5(h) so that pleading summary sheets are addressed only in one rule which addresses filing of papers, which appears to be the most appropriate place for the discussion.

The changes in subdivisions (f) and (g) are likewise intended to incorporate the MEJIS changes with language closely following those changes.

Subdivision (i) conforms to recent rules amendments to Rule 7(f) requiring materials to be filed, typed double spaced or printed on 8 1/2 x 11 paper. Additionally, the rule would require that text appear on only one side of each page.

Subdivision (g) addresses after hours and out of venue filing requirements from the Administrative Order of September 19, 1997.

Subdivision (j) is added to incorporate the substance of the FAX filing Administrative Order of November 22, 1996.

**Advisory Committee's Notes**  
**1995**

Rule 5(f) [now (i)(2)] is amended to permit the filing of miniaturized transcripts containing up to four 8 1/2 x 11 inch pages reduced to fit on a single 8 1/2 x 11-inch page. Such "travel transcripts" are commonly used by lawyers for their own purposes. They involve significant savings in cost and bulk. Allowing miniaturized transcripts to be filed in court will both eliminate the need to obtain a full-sized transcript for that purpose and ease the filing burden for the clerks' offices. The final clause assures that reporters will not be forced to obtain the equipment necessary to produce the miniaturized transcripts. Simultaneous amendments of Rules 26(f) and 74(b) make clear that such transcripts may be used both for depositions that are to be served or filed and for the transcript on appeal.

**Advisory Committee's Notes**  
**1985**

Rule 5(d) is amended simultaneously with the addition of Rule 26(f) to make the requirement of filing all papers with the court subject to the provisions of the latter rule, which will eliminate the requirement of filing for discovery materials.

**Advisory Committee's Note**  
**September 1, 1980**

This rule is amended to eliminate the requirement that docket information appear on the back of all pleadings and other papers. This information is necessary only for documents filed in the traditional triple-folded manner. With flat filing, the need for this practice is eliminated.

**Advisory Committee's Note**  
**November 15, 1976**

It is the purpose of this amendment to require that pleadings filed with the Court shall be on 8½ x 11 inch paper. This provision has previously been accomplished in the Maine Rules of Criminal Procedure and this amendment is

intended to secure conformity with respect to the size of pleadings in both criminal cases and civil cases.

The Committee recognizes that there may be isolated instances in which added expense may be incurred in preparing the record for purposes of appellate proceedings in certain types of proceedings. An example is in the case of probate appeals in some of the counties where the Probate Court utilizes pre-printed forms which are of legal size. It is suggested that in such cases an application be made to the Superior Court Justice or the District Court Judge when such cases are first entered with the Court for permission to utilize legal size pleadings in order to avoid the added expense of re-typing pleadings for inclusion in the record on appeal. It is presumed that in such cases where a proper showing of an avoidance of unnecessary expense can be made, the justice or judge hearing such application would allow it.

**Advisory Committee's Note  
October 1, 1970**

In connection with the general revision of the Discovery Rules (for an overall discussion of which see the Advisory Committee's Note to Rule 26), Rule 5(a) is amended to include among the papers which must be served upon each party "every paper relating to discovery required to be served upon a party." Although the existing language expressly includes notices and demands, it is not clear whether answers and responses to discovery under Rules 33, 34, and 36 are required to be served upon all parties or only upon the parties seeking the discovery. The court may relieve a party from this obligation of serving on all parties if it is too onerous because the discovery papers are particularly voluminous or the parties particularly numerous.

**Advisory Committee's Note  
December 31, 1967**

The addition to Rule 5(a) makes clear that the pre-trial memorandum provided for in amended Rule 16 must be served upon each of the parties.

**Explanation of Amendment  
November 1, 1966**

This amendment was taken from a 1963 amendment to F.R. 5(a). The exception it contains is to make it clear that an inconsistent provision elsewhere in



the rules is controlling. There is, for example, such an inconsistent provision in Rule 5(c).

**Reporter's Notes**  
**December 1, 1959**

This rule describes the mechanics of serving and filing pleadings and other papers. It is substantially the same as Federal Rule 5. The reference to notice of change of attorneys in subdivision (a) is not in the federal rule, nor is the sentence in subdivision (b) concerning the sufficiency of notice to the former attorney until notice of the change has been served. These are taken from Revised Rules of Court 2.

The last two sentences of subdivision (d) are not in the federal rule. The purpose is to eliminate all formalities as to proof of service of papers upon other parties. If an adverse party raises a question of notice, appropriate proof will naturally have to be made.

Subdivision (f) is not in the federal rule. It provides for the backing of all papers required to be filed. It further provides that the attorney's name on the back of the complaint shall constitute an endorsement for costs, where this is required, in the absence of any words showing a different purpose. This reflects existing law. *See* R.S.1954, Chap. 112, Sec. 6 (amended in 1959) [now 14 M.R.S.A. § 601]; *Sawtelle v. Wardwell*, 56 Me. 146.